IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

OP.No. 38468 of 2001(D)

PETITIONER:

BABURAJAN PARAMMAL,
ASSISTANT PUBLIC PROSECUTOR GRADE-II,
KUNNAMANNGALAM.

BY ADV. SRI.P.M.MOHAMED ALI,
SRI.M.A.T.PAI.

RESPONDENTS:
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1. **GOVERNMENT OF KERALA,**
   REPRESENTED BY THE CHIEF SECRETARY,
   SECRETARIAT,
   THIRUVANANTHAPURAM.

2. **THE SECRETARY TO GOVERNMENT,**
   HOME (C) DEPARTMENT, THIRUVANANTHAPURAM.

3. **THE SECRETARY TO GOVERNMENT,**
   VIGILANCE (C) DEPARTMENT,
   THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. V.T.K. MOHANAN.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 14/08/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 63168/2001 IN O.P. NO. 38468/2001

DISMISSED

14/08/2007. **SD/- T.R.RAMACHANDRAN NAIR, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ORDER G.O. (MS). NO. 1/99/VIG. DTD. 01/01/1999 ISSUED BY R3.

EXT.P.2: COPY OF THE ORDER NO. G.O. (MS). NO. 6/99/HOME DTD. 05/01/99 ISSUED BY R.2.

EXT.P.3: COPY OF THE ORDER IN C.M.P. 1471/99 IN O.P. 8971/99 DTD. 05/04/99 OF THIS HONOURABLE COURT.

EXT.P.4: COPY OF THE ORDER G.O. (MS). NO. 16/2000/VIG. DTD. 31/01/2000 ISSUED BY R3.

EXT.P.5: COPY OF THE ORDER G.O. (MS). NO. 32/2000/HOME DTD. 10/02/2000 ISSUED BY R.2.

EXT.P.6: COPY OF THE REPRESENTATION SUBMITTED BY PETITIONER BEFORE R.2. DTD. 17/04/2000.

EXT.P.7: COPY OF THE ORDER G.O. (RT). NO. 3635/2001/HOME DTD. 17/10/2001 ISSUED BY R.2.

EXT.P.8: COPY OF THE LETTER NO. A4.49125/2001 DTD. 07/11/2001 ISSUED BY DISTRICT COLLECTOR, KOZHIKODE.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

T.R. Ramachandran Nair, J.

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O.P.NO.38468 of 2001-D

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Dated this the 14th day of August, 2007

JUDGMENT

The petitioner was appointed as Assistant Public Prosecutor Grade II as per order dated 12.8.1993. While he was working so, he applied for the post of Additional Legal Adviser of Vigilance and Anti-corruption Bureau pursuant to notifications dated 8.8.1997 and 11.11.1997. By Ext.P1 order, he was provisionally appointed to that post. Subsequently he was relieved from his duties as Asst. Public Prosecutor Grade II as per order dated 5.1.1999 (Ext.P2). The appointment of the petitioner was challenged in O.P.No.8971/1999 and by Ext.P3 order dated 5.4.1999 in C.M.P.No.14971/1999 this court passed an order of injunction restraining the petitioner from functioning as Additional Legal Adviser in the Vigilance and Anti-corruption Bureau.

2. The Government by Ext.P4 order dated 31.1..2000 cancelled the orders appointing the petitioner as Additional Legal Adviser in view of the fact that the Government itself had cancelled the earlier notification. The petitioner was therefore posted as Asst. Public Prosecutor Grade II at Judicial First Class Magistrate's Court, Kunnamangalam by Ext.P5 order.

3. For the break in service between 1.4.1999 to 10.2.2000 the petitioner was not paid any salary which prompted him to file Ext.P6 representation before the Government claiming that he is entitled to be paid arrears of salary from 1.4.1999 to 10.2.2000 and for regularisation of that period treating it as duty. The Government rejected the same by Ext.P7 order which is under challenge in this original petition.

4. Learned counsel for the petitioner points out that the petitioner is entitled to be paid the arrears of salary and for regularisation of the period of break in service, since he was appointed by the Government itself. It is true that the petitioner was appointed pursuant to a notification issued by the Government. It is to be noticed that he could not function in view of the injunction order passed as per Ext.P3 by this court and no further directions have been issued in O.P.No.8971/1999 allowing the petitioner to claim the arrears of salary, etc. The Government, therefore, in Ext.P7 was of the view that rules do not provide to treat the period during which he was kept out of service as duty for payment of salary.

5. In the light of Ext.P3 order of injunction, it cannot be said that the view taken by the Government in Ext.P7 is wrong. Admittedly the petitioner did not work either in the post of Additional Legal Adviser or as Asst. Public Prosecutor during the relevant period and therefore I see no

ground to set aside Ext.P7.

Therefore, the writ petition fails and it is dismissed.

(T.R. Ramachandran Nair, Judge.)

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T.R. Ramachandran Nair, J.

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O.P. No.38468 of 2001-D

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JUDGMENT

9th August, 2007.